

SENATE BILL NO. 1441

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Senator Locke)

A BILL to amend and reenact § 56-585.1:11 of the Code of Virginia, relating to development of offshore wind capacity; cost recovery.

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.1:11 of the Code of Virginia is amended and reenacted as follows:

§ 56-585.1:11. Development of offshore wind capacity.

A. As used in this section:

"Advanced clean energy buyer" means a commercial or industrial customer of a Phase II Utility, irrespective of generation supplier, (i) with an aggregate load over 100 megawatts; (ii) with an aggregate amount of at least 200 megawatts of solar or wind energy supply under contract with a term of 10 years or more from facilities located within the Commonwealth by January 1, 2024; and (iii) that directly procures from the utility the electric supply and environmental attributes of the offshore wind facility associated with the lesser of 50 megawatts of nameplate capacity or 15 percent of the commercial or industrial customer's annual peak demand for a contract period of 15 years.

"Aggregate load" means the combined electrical load associated with selected accounts of an advanced clean energy buyer with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent.

"Control" means the legal right, directly or indirectly, to direct or cause the direction of the management, actions, or policies of an affiliated entity, whether through the ability to exercise voting power, by contract, or otherwise. "Control" does not include control of an entity through a franchise or similar contractual agreement.

27 "Qualifying large general service customer" means a customer of a Phase II Utility, irrespective
28 of general supplier, (i) whose peak demand during the most recent calendar year exceeded five megawatts
29 and (ii) that contracts with the utility to directly procure electric supply and environmental attributes
30 associated with the offshore wind facility in amounts commensurate with the customer's electric usage for
31 a contract period of 15 years or more.

32 "Wind turbine generator" means a structure comprising of a tower, a rotor with blades connected
33 at the hub, and nacelle and ancillary electrical and other equipment that is affixed to a foundation of which
34 multiple structures comprise a generating facility.

35 B. In order to meet the Commonwealth's clean energy goals, prior to December 31, ~~2034~~ 2032, the
36 construction or purchase by a public utility of one or more offshore wind generation facilities located off
37 the Commonwealth's Atlantic shoreline or in federal waters and interconnected directly into the
38 Commonwealth, with an aggregate capacity of up to 5,200 megawatts, is in the public interest and the
39 Commission shall so find, provided that no customers of the utility shall be responsible for costs of any
40 such facility in a proportion greater than the utility's share of the facility.

41 C. 1. Pursuant to subsection B, construction by a Phase II Utility of one or more new utility-owned
42 and utility-operated generating facilities utilizing energy derived from offshore wind and located off the
43 Commonwealth's Atlantic shoreline, with an aggregate rated capacity of not less than 2,500 megawatts
44 and not more than 3,000 megawatts, along with electrical transmission or distribution facilities associated
45 therewith for interconnection is in the public interest. In acting upon any request for cost recovery by a
46 Phase II Utility for costs associated with such a facility, the Commission shall determine the
47 reasonableness and prudence of any such costs, provided that such costs shall be presumed to be
48 reasonably and prudently incurred if the Commission determines that (i) the utility has complied with the
49 competitive solicitation and procurement requirements pursuant to subsection E; (ii) the project's projected
50 total levelized cost of energy, including any tax credit, on a cost per megawatt hour basis, inclusive of the
51 costs of transmission and distribution facilities associated with the facility's interconnection, does not
52 exceed 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle
53 combustion turbine generating facility as estimated by the U.S. Energy Information Administration in its

54 Annual Energy Outlook 2019; and (iii) the utility has commenced construction of such facilities for U.S.
55 income taxation purposes prior to January 1, 2024, or has a plan for such facility or facilities to be in
56 service prior to January 1, 2028. The Commission shall disallow costs, or any portion thereof, only if they
57 are otherwise unreasonably and imprudently incurred. In its review, the Commission shall give due
58 consideration to (a) the Commonwealth's renewable portfolio standards and carbon reduction
59 requirements, (b) the promotion of new renewable generation resources, and (c) the economic
60 development benefits of the project for the Commonwealth, including capital investments and job
61 creation. The Commission shall also give preference to requests for cost recovery by a Phase II Utility for
62 generating facilities utilizing energy derived from offshore wind that maximize economic benefits to the
63 Commonwealth, such as benefits arising from the construction and operation of such facilities and the
64 manufacture of wind turbine generator components.

65 2. Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate
66 of return to a Phase II Utility for the construction of one or more new utility-owned and utility-operated
67 generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's
68 Atlantic shoreline pursuant to this section.

69 3. Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision
70 A 6 of § 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a non-
71 bypassable charge, regardless of the generation supplier of any such customer, other than (i) PIPP eligible
72 utility customers, (ii) advanced clean energy buyers, and (iii) qualifying large general service customers.
73 No electric cooperative customer of the utility shall be assigned, nor shall the utility collect from any such
74 cooperative, any of the costs of such facilities, including electrical transmission or distribution facilities
75 associated therewith for interconnection. The Commission may promulgate such rules, regulations, or
76 other directives necessary to administer the eligibility for these exemptions.

77 4. The Commission shall permit a portion of the nameplate capacity of any such facility, in the
78 aggregate, to be allocated to (i) advanced clean energy buyers or (ii) qualifying large general service
79 customers, provided that no more than 10 percent of the offshore wind facility's capacity is allocated to
80 qualifying large general service customers. A Phase II Utility shall petition the Commission for approval

81 of a special contract with any advanced clean energy buyer, or any special rate applicable to qualifying
82 large general service customers, pursuant to § 56-235.2, no later than 15 months prior to the projected
83 commercial operation date of the facility, and all customer enrollments associated with such special
84 contracts or rates shall be completed prior to commercial operation of the facility. Any such special
85 contract or rate may include provisions for levelized rates of service over the duration of the customer's
86 contracted agreement with the utility, and the Commission shall determine that such special contract or
87 rate is designed to hold nonparticipating customers harmless over its term in connection with any petition
88 for approval by the utility. The utility may petition for approval of such special contracts or rates in
89 connection with any petition for approval of a rate adjustment clause pursuant to subdivision A 6 of § 56-
90 585.1 to recover the costs of the facility, and the Commission shall rule upon any such petitions in its final
91 order in such proceeding within nine months from the date of filing.

92 D. In constructing any such facility contemplated in subsection B, the utility shall develop and
93 submit a plan to the Commission for review that includes the following considerations: (i) options for
94 utilizing local workers; (ii) the economic development benefits of the project for the Commonwealth,
95 including capital investments and job creation; (iii) consultation with the Commonwealth's Chief
96 Workforce Development Officer, the Chief Diversity, Equity, and Inclusion Officer, and the Virginia
97 Economic Development Partnership on opportunities to advance the Commonwealth's workforce and
98 economic development goals, including furtherance of apprenticeship and other workforce training
99 programs; (iv) giving priority to the hiring, apprenticeship, and training of veterans, as that term is defined
100 in § 2.2-2000.1, local workers, and workers from historically economically disadvantaged communities;
101 and (v) procurement of equipment from Virginia-based or United States-based manufacturers using
102 materials or product components made in Virginia or the United States, if reasonably available and
103 competitively priced.

104 E. Any project constructed or purchased pursuant to subsection B shall (i) be subject to competitive
105 procurement or solicitation for a substantial majority of the services and equipment, exclusive of
106 interconnection costs, associated with the facility's construction; (ii) involve at least one experienced
107 developer; and (iii) demonstrate the economic development benefits within the Commonwealth, including

108 capital investments and job creation. A utility may give appropriate consideration to suppliers and
109 developers that have demonstrated successful experience in offshore wind.

110 F. Any project constructed or purchased pursuant to subsection B shall include an environmental
111 and fisheries mitigation plan submitted to the Commission for the construction and operation of such
112 offshore wind facilities, provided that such plan includes an explicit description of the best management
113 practices the bidder will employ that considers the latest science at the time the proposal is made to
114 mitigate adverse impacts to wildlife, natural resources, ecosystems, and traditional or existing water-
115 dependent uses. The plan shall include a summary of pre-construction assessment activities, consistent
116 with federal requirements, to determine the spatial and temporal presence and abundance of marine
117 mammals, sea turtles, birds, and bats in the offshore wind lease area.

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